

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CSX TRANSPORTATION, INC.

Plaintiff,

v.

WILLIAMS *et al.*

Defendants.

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Case No. 05-00338 (EGS)

**PLAINTIFF'S RESPONSES AND OBJECTIONS TO DEFENDANTS'
FIRST SET OF INTERROGATORIES AND SECOND REQUEST
FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 33 and 34 of the Federal Rules of Civil Procedure, and Local Civil Rules 30.4 of this Court, Plaintiff CSX Transportation, Inc. ("CSXT") hereby submits its Responses and Objections to the First Set of Interrogatories and Second Requests for Production of Documents (collectively the "Written Discovery") propounded by Defendants Anthony Williams, as Mayor of the District of Columbia, and the District of Columbia (collectively "the District").

PROCEDURAL BACKGROUND

The District's discovery requests and these Responses and Objections must be viewed in the context in which the District propounded them and in which CSXT is responding and objecting to them.

Pending before the Court and scheduled for hearing on March 23, 2005 are CSXT's Motion for Preliminary Injunction (filed February 22, 2005) and CSXT's Motion for Summary Judgment (filed March 8, 2005). In the latter motion, CSXT has demonstrated that, based on undisputed facts, it is entitled to a judgment that the District of Columbia Terrorism Prevention

in Hazardous Materials Transportation Emergency Act of 2005 (the “District Act”) is expressly preempted by three federal statutes, was not an authorized exercise of the District’s legislative power, and is *per se* invalid under the Commerce Clause. Accordingly, the District Act is invalid, and its implementation and enforcement should be permanently enjoined.

At a hearing on February 24, 2005, the Court considered the District’s argument that it needed limited discovery in connection with the then-pending motion for preliminary injunction, and CSXT’s argument that the preliminary injunction motion raised only legal issues as the underlying facts were not legitimately in dispute. The Court allowed the District limited discovery: (1) the deposition of John M. Gibson, Jr., whose affidavit CSXT had submitted in support of its Motion for Preliminary Injunction, and (2) the deposition of Joseph C. Osborne, Jr., whose affidavit Norfolk Southern Railway Company had submitted in support of its *amicus* brief. CSXT and Norfolk Southern promptly made arrangements for those depositions. The District took the deposition of Mr. Gibson, CSXT’s Vice-President for Operations, Research and Planning, on March 3, 2005. Mr. Gibson provided documents related to his affidavit at the deposition (CSX 001-422) and the District made no complaint that those documents did not fulfill the Court’s direction regarding production of limited documents. At the deposition, the District made no serious effort to probe the basis for most of the statements made by Mr. Gibson, (even though its counsel had called the affidavit “baloney” at the February 24 hearing). That deposition concluded at 3:25 p.m. Without any suggestion that Mr. Gibson had not fully and fairly answered the questions posed to him,¹ and without any mention of the need for further

¹ We note that Interrogatories 1 and 2, unlike the other Interrogatories, are in the nature of follow-up questions to two questions Mr. Gibson was unable to answer at his deposition. Mr. Gibson was asked at the deposition whether he could provide certain traffic figures for 2003 in addition to the figures he provided. Mr. Gibson answered that he had not done that analysis. Mr. Gibson was also asked whether he could state the number of chlorine shipments (one of the

information, the District served the Written Discovery on CSXT by electronic mail at 5:15 p.m. Mr. Osborne was deposed on March 4, 2005.

At the February 24 hearing, the District made no mention of an intent to seek additional Written Discovery on an expedited basis. The service of the Written Discovery was at odds with the Court's authorization at the hearing for the District to inquire into the basis of the two affidavits that had been submitted through targeted depositions, and was also at odds with the Court's February 24 Scheduling Order which directed that the limited discovery for purposes of the preliminary injunction motion was to be completed by March 8: "Discovery due by 3/8/2005."

In the face of the Court's Order, the District served the Written Discovery late in the day on March 3 and requested that CSXT respond within five business days, by March 10. During this period, CSXT was also obligated to prepare and file its Motion for Summary Judgment. Some of the questions go to the subjects covered in Mr. Gibson's affidavit, but a number of the questions go well beyond the scope of Mr. Gibson's affidavit and inquire about CSXT's and the United States' security plans, analyses and activities. These matters are, as discussed below, highly confidential, classified, and/or security sensitive.

On March 4, counsel for CSXT expressed to counsel for the District the various objections CSXT had to the Written Discovery, especially to the parts that addressed security issues. Nevertheless, in the interest of cooperation and moving this matter forward expeditiously, counsel for CSXT represented that CSXT was prepared to provide good faith responses to the requests in the time frame requested along the following lines: CSXT would

Banned Materials) through the District in 2003 and 2004. Mr. Gibson did not have that specific number available at the deposition.

provide some additional information in response to certain requests, would confirm that information responsive to certain other requests had already been provided through the deposition of Mr. Gibson, and would object to certain other requests. The District's counsel stated that he understood and accepted CSXT's proposal. These Responses and Objections conform to the understanding reached between counsel.

Although CSXT has agreed to submit these Responses and Objections on a very abbreviated schedule, in doing so it does not waive – but preserves and asserts – its objection that the Written Discovery was not authorized by the Court at the February 24 hearing, that it violated the Court's Scheduling Order, and that it is in conflict with the time frames for discovery set forth in Rules 33 and 34 of the Federal Rules of Civil Procedure.

CONFIDENTIAL SECURITY SENSITIVE INFORMATION

The District seeks very broad and detailed information concerning measures that have been considered and taken, and are being considered and taken, by the Federal government and by CSXT relating to the security and the safety of materials being transported in interstate commerce, as well as threat information relating to those materials. Both the threat and the countermeasures information is extremely confidential and sensitive, dissemination decisions about this material are entrusted by statute and regulation to the U.S. Government, and its disclosure here would both be illegal and damaging to the security interests that the Federal government and CSXT have been working to protect. Among other things, and without limitation in any way:

1. CSXT lacks authority to produce information or documents to the extent that such information or documents have been classified according to the procedures established by

Executive Order 13292, 68 Fed. Reg. 15,315 (March 28, 2003), and by the Information Security Oversight Office (“ISO”) acting pursuant to a delegation from the President in the Executive Order. *See id.* at 15,327 (authorizing Director of ISO to “issue such directives as are necessary to implement [Executive Order 13292]”); 68 Fed. Reg. 55,168 (September 22, 2003) (setting forth final rule of ISO, codified at 32 C.F.R. Part 2001, relating to classified national security information); 32 C.F.R. § 2001.41 (requiring persons who have access to classified information to protect such information from persons without authorized access).

2. CSXT is prohibited from producing information that is considered security sensitive information (“SSI”) pursuant to 49 U.S.C. § 40119, 49 U.S.C. § 114(s) and 49 C.F.R. Parts 15 and 1520. The regulations define SSI as “information obtained or developed in the conduct of security activities, including research and development, the disclosure of which the [Secretary of DOT or TSA] has determined would be detrimental” to transportation safety or to the security of transportation. 49 C.F.R. §§ 15.5(a)(3); 1520.5(a)(3). The regulations further define SSI to include, among other things: (1) “any information held by the Federal government concerning threats against transportation or transportation systems and sources and methods used to gather or develop threat information,” (2) “any vulnerability assessment directed, created, held, funded, or approved by the DOT [or] DHS,” and (3) any other information “that TSA determines is SSI under 49 U.S.C. 114(s) or that the Secretary of DOT determines is SSI under 49 U.S.C. 40119.” 49 C.F.R. §§ 15.5; 1520.5. CSXT believes that information sought by the Written Discovery relating to the security and safety of hazardous materials transported in interstate commerce and relating to threat information would be considered SSI, and it has been informed by the Federal government that it may not produce any information that may be SSI without obtaining a

determination from the Federal government that the information is not SSI. See also 49 C.F.R. §§ 15.9(a)(2); 1520.9(a)(2).

3. Information sought by the Written Discovery is or may be critical infrastructure information (“CII”) which is also protected by law from disclosure. Section 214 of the Homeland Security Act (6 U.S.C. § 133) establishes a framework for the receipt, handling, and storage of CII. Section 214 enables private sector entities to submit to DHS sensitive information about the nation’s critical infrastructure, which includes the national rail system, with the assurance that such information will be protected from public disclosure and from use in civil litigation. Interim regulations concerning CII are set forth at 6 C.F.R. Part 29. Protected CII may not be used by any federal, state or local government, or any third party, in a civil action arising under state or federal law without the written consent of the person or entity submitting the information. 6 U.S.C. § 133(a)(1)(C). Under the regulations, CSXT is prohibited from disclosing CII to any unauthorized person, including the other parties to this action.

4. Information sought by the Written Discovery may also be prohibited from disclosure by regulations of DOT’s Research and Special Programs Administration. See 49 C.F.R. §§ 172.800-172.804.

5. To the extent that CSXT were not prohibited by statute, regulation, Executive order or contract law from disclosing certain of the confidential information and materials requested by the Written Discovery, CSXT still objects to the requests on the basis that this is the same type of information that such statutes and regulations are designed to protect. Disclosure of such information would be highly detrimental to the security interests of CSXT and of the United States.

GENERAL OBJECTIONS

Plaintiff's Responses and Objections are made without waiving or intending to waive, but rather intending to preserve and preserving and asserting:

1. All objections to competency, relevancy, materiality, privilege and admissibility as evidence for any purpose in this or any other actions or any subsequent proceedings;
2. The right to object to use of any document that may be produced, or the subject matter thereof, in this or any other actions or subsequent proceedings on any grounds;
3. The right at any time to revise, correct, supplement, clarify or amend the objections or responses to the Written Discovery , if further factual developments or analysis warrant a modification or if additional information is obtained or documents are located that are properly called for by the Written Discovery .
4. Plaintiff objects to the Written Discovery because it exceeds the limited discovery authorized by the Court at the February 24, 2005 hearing.
5. Plaintiff objects to the Written Discovery because it violates the terms of the Court's February 24 Scheduling Order which required that all discovery for this phase of this action be completed by March 8, 2005.
6. Plaintiff objects to the Written Discovery because it seeks responses on a timeframe inconsistent with that required by Rules 33 and 34 of the Federal Rules of Civil Procedure.
7. Plaintiff objects to the Written Discovery because it seeks information that is unrelated and irrelevant to the pending motions for preliminary injunction and summary judgment.

8. Plaintiff objects to those parts of the Written Discovery which seek security-related information. As discussed above, such information is highly confidential, classified and/or security sensitive, and its disclosure would be illegal and damaging to the security interests of CSXT and the United States.

9. Plaintiff objects to the Written Discovery to the extent that it calls for disclosure of any information protected by any applicable privilege including, without limitation, any document or information that is an attorney-client communication, that otherwise is protected by the attorney-client privilege, that was prepared in anticipation of litigation or for trial, that otherwise constitutes work product, or that is otherwise immune from discovery. Inadvertent disclosure of any such information shall not constitute a waiver of any privilege or any other ground for objection to discovery with respect to such information or any other information or with respect to the subject matter thereof, nor shall such inadvertent disclosure waive the right of Plaintiff to object to the use of any such information in this or any other actions or subsequent proceedings.

10. Plaintiff objects to the Written Discovery to the extent that it seeks disclosure of documents that consist of confidential and proprietary business or financial information. Such information will only be provided if and when an appropriate protective order is entered in this matter. CSXT has proposed a form of protective order to the District but the District was not agreeable to the terms thereof.

11. Plaintiff objects to the Written Discovery to the extent that it purports to impose obligations on CSXT greater than or different from those imposed by the Federal Rules of Civil Procedure, Local Rules, and this Court's scheduling orders.

12. Plaintiff objects to the Written Discovery to the extent that it seeks information that is not reasonably available to Plaintiff or not in Plaintiff's possession, custody or control.

The foregoing General Objections are incorporated by reference into each of the responses and answers below, as if set forth fully therein.

RESPONSES TO INTERROGATORIES

1. State the number of rail cars transporting Covered Ultrahazardous Materials over (i) the North-South line and (ii) the East-West line in each of: (a) calendar year 2003, (b) calendar year 2004, before CSXT began its reported voluntary rerouting in the District, and (c) calendar year 2004, after CSXT began its reported voluntary rerouting in the District.

Response: CSXT's traffic databases contain a large amount of data, and the nature of the data can vary from database to database. Sorting the data can be difficult and time-consuming. Slight differences in the query can produce variations in the answers from run to run. It is therefore difficult to produce exact car numbers of the nature sought in these questions. However, CSXT has made a good faith effort to obtain the requested information in the time permitted and believes that the following numbers are good estimates of the requested carload numbers. All numbers provided are approximations.

During 2003, there were 1,125 such rail cars on the North-South line and 3,383 such cars on the East-West line. During the first 91 days of 2004, there were 762 such cars on the North-South line and 1,348 such cars on the East-West line. During the period May 2004-January 2005, there were 87 such cars on the North-South line and 1,645 such cars on the East-West line. CSXT commenced the phase-in of the voluntary reroute in April 2004, and the process required months thereafter of iterative coding changes to accomplish fully the voluntary reroute. Accordingly, we have excluded April 2004 rail cars from our count, and have included rail cars

during January 2005 in order to provide a full 9-month sample following the commencement of the voluntary reroute.

2. State the number of rail cars transporting chlorine over (i) the North-South line and (ii) the East-West line in each of: (a) calendar year 2003, (b) calendar year 2004, before CSXT began its reported voluntary rerouting in the District, and (c) calendar year 2004, after CSXT began its reported voluntary rerouting in the District.

Response: CSXT's traffic databases contain a large amount of data, and the nature of the data can vary from database to database. Sorting the data can be difficult and time-consuming. Slight differences in the query can produce variations in the answers from run to run. It is therefore difficult to produce exact car numbers of the nature sought in these questions. However, CSXT has made a good faith effort to obtain the requested information in the time permitted and believes that the following numbers are good estimates of the requested carload numbers. All numbers provided are approximations.

During 2003, there were approximately 295 such rail cars on the North-South line and 336 such rail cars on the East-West line. During the first 91 days of 2004, there were 156 such rail cars on the North-South line and 123 such cars on the East-West line. During the period May 2004-January 2005, there were approximately 51 such cars on the North South line and approximately 132 such cars on the East-West line. These rail cars are also included in the number of rail cars reported in response to Interrogatory 1 above. As also stated above, CSXT commenced the phase-in of the voluntary reroute in April 2004, and the process required months of iterative coding changes to accomplish fully the voluntary reroute. Accordingly, we have excluded April 2004 railcars from our count, and have included rail cars in January 2005 to provide a full 9-month sample following the commencement of the voluntary reroute.

3. Identify each and every Federal Action Addressing the D.C. Hazmat Terrorist Threat relating to or affecting shipments of Covered Ultrahazardous Materials over (i) the North-

South line as it passes through the District of Columbia or (ii) the East-West line as it passes through the District of Columbia. With respect to each such action, state: (a) the agency, officer or instrumentality of the United States that took the action; (b) when the action was taken and in what form; (c) all actions taken by CSXT in response to the Federal action, including, for each action, the costs thereof and how CSXT believes such action addresses the D.C. Hazmat Terrorist Threat; (d) the identity of the CSXT officer(s) or employee(s) with primary responsibility in connection with such actions; and (e) any additional future actions in response planned or proposed by CSXT, and the estimated costs thereof.

Response: CSXT objects to this Interrogatory which seeks security related information on the basis set forth in Objection Number 8 above. CSXT also objects on the bases of Objections 3, 4, 5, 6, 7, 9, 10 and 12.

Without waiving those objections, CSXT provides the following information which has been previously made public.

Security measures implemented since September 11, 2001 were discussed in the Statement of CSX Transportation, Inc. submitted to the D.C. Council Committee on Public Works and the Environment on January 23, 2004.

These measures were also discussed by Thomas J. Lockwood, Director of the Department of Homeland Security's Office of National Capital Region Coordination (Ex. 8 to Preliminary Injunction Memorandum) and by H.R. "Skip" Elliott, Vice President-Public Safety for CSX Transportation, Inc. (Ex. 9 to the Preliminary Injunction Memorandum) at the November 22, 2004 Public Roundtable of the D.C. Council Committee on Public Works and the Environment. CSXT has prepared a transcript of the question and answer period following their statements, and is producing that transcript.

As Mr. Elliott explained to the Council, CSXT coordinates with many federal agencies in connection with security information and measures (on a regular, ongoing basis and in connection with major events that are expected to attract large crowds in proximity to CSXT's north-south (I-95 line) through the District), including the following:

- Department of Defense
- Department of Homeland Security (various components, including the Infrastructure Protection Directorate)
- Department of Homeland Security Transportation Security Administration (various components including Cargo Security and the Transportation Security Operation Center)
- F.B.I. (Joint Terrorism Task Force, Washington District Office)
- Federal Railroad Administration
- U.S. Capitol Police
- U.S. House and Senate Sergeant-at-Arms
- U.S. Park Police
- U.S. Secret Service

CSXT also coordinates with agencies of the District of Columbia, including through the D.C.

Office of Emergency Management Command Center.

CSXT and Federal Government security measures were also discussed in the Preliminary Injunction Memorandum and in the Statement of Interest of the United States of America.

4. Identify all studies, analyses, calculations or documents that CSXT relies on for its assertion, at page 18 of the CSXT Memorandum, that, if it were to comply with the DC Terrorism Prevention Act, “11,400 loaded and empty cars would be affected each year,” and that the resulting routings would “generate an additional 2,000,000 car miles and an additional 7,400 car handlings each year.”

Response: See the transcript of the deposition testimony of Mr. Gibson, which is incorporated herein by reference. Mr. Gibson explained in his deposition how CSXT analyzed the impact the District Act would have on CSXT’s freight operations. In brief, CSXT ran the “ACT” program (the program CSXT uses to determine the most efficient routes for its cars) on CSXT’s mainframe computer. A restriction was placed on the CSXT’s north-south and east-west lines through the District of Columbia with respect to shipments with the Standard Transportation Commodity Codes prohibited by the District Act. The program then provided the numbers for loaded and empty cars, additional car miles and additional car handlings on each line.

5. Identify all studies, analyses, calculations or documents that CSXT performed or relied upon to quantify the “substantial additional investment in planning and computer programming” and “substantial additional costs” described on pages 18-19 of the CSXT Memorandum.

Response: See the transcript of the deposition testimony of Mr. Gibson, which is incorporated herein by reference. As Mr. Gibson testified, CSXT has not done a special study of the costs that would be imposed on itself, shippers and users by the District Act. These costs would include (1) the costs to CSXT of planning and computer programming for rerouting the shipments of Banned Materials, (2) the direct costs to CSXT of additional car miles and handlings, (3) the indirect costs to CSXT from the inefficient routing of the traffic; and (4) the costs to shippers and users from the longer car cycle time that would result from detouring around the District. With respect to the first category of costs, Mr. Gibson described in qualitative terms the effort that would be required to reroute the estimated 11,400 cars around the District. With respect to the fourth category of costs, Mr. Gibson similarly described in qualitative terms the costs that would be imposed on shippers and users of the Banned Materials.

6. Identify all studies, analyses, calculations or documents regarding the risk of a terrorist-engineered release of Covered Ultrahazardous Materials in the District or in any of the municipal areas through which CSX Transportation or Norfolk Southern rail lines pass that CSXT alleges may incur an increased risk as a result of rerouting under the D.C. Hazmat Anti-Terrorism Act.

Response: CSXT objects to this Interrogatory on the basis set forth in Objection Number 8. Without waiving that objection, CSXT provides the following information which has been previously made public. The Department of Homeland Security Transportation Security Administration has responsibility to conduct risk assessments of freight rail operations. As explained in response to Interrogatory 3 above, CSXT has cooperated with TSA in its vulnerability assessment of the DC Rail Corridor. CSXT is also cooperating in assessments

being performed or planned by TSA at other municipal areas through which CSXT rail lines pass.

7. Identify all studies, analyses, calculations or documents relating to (a) CSXT's conclusions that "detouring hazardous shipments around the District would not produce any system-wide improvement in safety or security" and (b) how risks and potential fatalities would change if it were to re-route covered ultrahazardous materials shipments onto any of the Norfolk Southern lines, assuming Norfolk Southern consented or that its common carrier obligations required it to accept such shipments.

Response: (a) CSXT stated as follows in its Preliminary Injunction Memorandum (at 19):

Shifting cars to alternative routes would necessarily increase hazardous materials traffic in other communities. Gibson Aff. (Ex. 1) ¶ 55. Moreover, it is unlikely that detouring hazardous shipments around the District would produce any system-wide improvement in safety or security. To the contrary, longer transit times and distances, increased car handlings, and longer yard dwell times tend to *increase* the inherent risk of transporting hazardous materials. *Id.* ¶ 48; DOT Comments (Ex. 2) at 7-8.

The Statement of Interest of the United States of America provided the following information (at 9-10):

The risks associated with the transportation of hazardous materials correspond to the amount of time in transit. See, e.g., FRA Track Safety Standards, 63 Fed. Reg. 33992, 33999 (June 22, 1998) ("[T]he risk of releases of hazardous materials is reduced by minimizing the time such shipments spend in transportation. It would be poor public policy to allow local governments to attempt to lower their risk by raising everyone's risk and by clogging the transportation system.").

See the transcript of the deposition testimony of Mr. Gibson, which is incorporated herein by reference. Mr. Gibson explained in his deposition that it is common knowledge in the rail industry that longer transit times and distances, increased car handlings, and longer yard dwell times tend to increase the inherent risk of transporting hazardous materials.

We also provide the following information:

The Banned Materials are transported in specially designed and manufactured fleets of rail cars. To the extent that the District Act, and similar local acts, preclude rail transportation of the Banned Materials, shippers could potentially invest in the design and manufacture of fleets of tanker trucks. However, US DOT statistics indicate that there would likely be more releases of the Banned Materials from tanker trucks than from rail cars. We are producing a presentation by the Association of American Railroads, "U.S. Railroad Safety Statistics and Trends," in support of this response.

(b) The above analyses do not depend on the ownership of the rail lines over which the shipments are detoured.

8. Identify each of the "new security measures" that CSXT refers to on page 6 of the CSXT Memorandum and with respect to each: (a) identify all studies, analyses, calculations or documents relating to CSXT's conclusion that such actions render the rerouting required under the DC Act unnecessary for protecting against the D.C. Hazmat Terrorist Threat; and (b) identify all studies, analyses, calculations or documents relating to CSXT's understanding of the extent to which the "new security measures" mentioned above have reduced or will reduce the D.C. Hazmat Terrorist Threat.

Response: Plaintiff refers to and incorporates herein its objections and response to Interrogatory 3 above.

9. With respect to the CSXT security plan referenced on page 30 of the CSXT Memorandum: (a) state how actions taken under the security plan have reduced or will reduce the D.C. Hazmat Terrorist Threat; (b) identify all studies, analyses, calculations or documents CSXT considered or relied upon in determining whether this plan should include the rerouting of covered ultrahazardous materials; (c) identify any document demonstrating, or otherwise relating to, the Federal Railroad Administration's and/or Transportation Security Administration's approval of the CSXT security plan, including (i) any document discussing or presenting the reasons for such approval and (ii) any document discussing or presenting analyses of potential rerouting of Covered Ultrahazardous Materials around the District.

Response: CSXT objects to this Interrogatory which seeks security related information on the basis set forth in Objection Number 8 above. CSXT also objects on the bases of Objections 3, 4, 5, 6, 7, 9, 10 and 12.

10. With respect to its reported voluntary rerouting in the District, identify all documents relating to such rerouting, including documents describing operational changes, assessments of the effects on safety and security, and the costs or burdens incurred by CSXT and any third party as a result of such rerouting.

Response: CSXT objects to this Interrogatory which seeks security related information on the basis set forth in Objection Number 8 above. CSXT also objects on the bases of Objections 3, 4, 5, 6, 7, 9, 10 and 12. Without waiving these objections, CSXT refers the District to the transcript of the deposition testimony of Mr. Gibson, which is incorporated herein by reference.

11. Identify and describe with particularity those portions of Norfolk Southern's rail lines on which CSXT has trackage rights.

Response: CSXT has trackage rights over a Norfolk Southern line segment between Hagerstown, Maryland and Lurgan, Pennsylvania, a distance of approximately 33.6 miles. We are producing herewith the January 27, 1999 Agreement granting CSXT these trackage rights.

12. For those portions of Norfolk Southern's rail lines on which CSXT has trackage rights, please describe whether data from those rail lines was included in and/or reviewed when CSXT developed its computer models of the impact of the DC Hazmat Anti-Terrorism Act.

Response: Because of the limited geographic scope of CSXT's trackage rights between Hagerstown, Maryland and Lurgan, Pennsylvania, these rights were not relevant to CSXT's consideration of the impact of the District Act.

CSXT has trackage rights over certain other Norfolk Southern lines in the eastern United States, but given the location and limited geographic scope of these rights, none of these rights was relevant to CSXT's consideration of the impact of the District Act.

13. Please describe any conversations between CSXT and Norfolk Southern that concerned trackage rights or interchange agreements that could decrease the mileage referenced in Mr. Gibson's scenarios, paragraph 33 and 34, and/or otherwise might decrease the burden to CSXT in re-routing hazardous materials as required to comply with DC Hazmat Anti-Terrorism Act.

Response: CSXT did not initiate any conversations with the Norfolk Southern Railway Company ("Norfolk Southern") concerning the possibility of entering into trackage rights or interchange agreements relating to the District Act. The Norfolk Southern Railway Company made and announced its decision not to accept cars of materials from CSXT prohibited by the District Act without prior consultation with CSXT. Thereafter, Norfolk Southern counsel informed CSXT counsel of that decision.

14. Identify all persons consulted in preparing your responses to these Interrogatories.

Response: Excluding counsel, Dharma Acharya, H.R. "Skip" Elliott, John M. Gibson, Jr., and Michael Swain provided information used in preparing these responses.

Responses to Second Request for Production of Documents

1. Produce all documents identified in any of CSXT's answers to the above Interrogatories that have not previously been produced in response to the District's First Request for Production of Documents.

Response: Such documents are being produced.

2. Produce all documents containing, reflecting, or otherwise pertaining to any study, analysis, or calculation identified in any of CSXT's answers to the above interrogatories that have not previously been produced in response to the District's First Request for Production of Documents.

Response: To the extent that this request is broader than Request 1 above, CSXT objects on the bases set forth in Objections 4, 5, 6, 7, 8, 9, 10 and 12 above.

Respectfully submitted,

Dated: March 10, 2005

_____/s/ Mary Gabrielle Sprague

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CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2005, I caused a copy of the foregoing Plaintiff's Responses and Objections to Defendants' First Set of Interrogatories and Second Request for Production of Documents to be served by electronic mail and by hand upon the following:

Richard S. Love
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/s/ Mary Gabrielle Sprague